

**Comments to the House Committee on Ways and Means
Concerning the Colombia Free Trade Agreement**

Submitted by the
U.S. Labor Education in the Americas Project (USLEAP)

March 31, 2011

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This submission is for the House Committee on Ways and Means Trade Subcommittee's hearing held on the Colombia Free Trade Agreement (FTA) on Thursday, March 17, 2011.

Organization Background and Colombia

The U.S. Labor Education in the Americas Project (USLEAP) is an independent non-profit organization founded in 1987 that supports the basic rights of workers in Latin America. USLEAP supports global trade but believes that without trade rules that protect the rights of workers, the benefits of trade will not be shared by workers abroad and unfettered trade will accelerate the race to the bottom for workers in the United States.

In 2001, USLEAP, which until 1998 was known as the U.S./Guatemala Labor Education in the Americas Project, began working in Colombia with various non-governmental organizations, unions, labor centrals, and human rights organizations. Over the past decade, USLEAP has led worker rights fact-finding delegations to Colombia, produced a special bulletin on violence against trade unionists in Colombia, was the principle author of *"Justice for All: The Struggle for Worker Rights in Colombia,"* released in 2006 by the AFL-CIO's Solidarity Center, and for the past three years has produced an annual impunity report analyzing convictions achieved by special labor courts established in 2007 to consider cases of violence against trade unionists.

In March 2004, USLEAP testified at a public hearing at USTR concerning the Bush Administration's intent to enter into negotiations for an Andean Free Trade Agreement with Colombia and other countries. USLEAP argued then that negotiations should not be initiated with Colombia until it had met minimum conditions regarding respect for the basic rights of workers, emphasizing Colombia's well-known standing as the most dangerous country in the world to be a trade unionist, with more trade unionists murdered in Colombia than in any other country in the world. Seven years later that stark fact has not changed. Indeed, since then more trade unionists have been murdered in Colombia than in the rest of the world combined (see graph on page three). Colombia did not meet the minimum threshold for initiating negotiations in 2004, and in 2011 it does not meet the minimum threshold for Congress to ratify a FTA with Colombia.

USLEAP, because of our own mandate, focuses on worker rights, impunity, and violence against trade unionists. Much of the political and public debate about worker rights in Colombia has centered on the more easily understood issues of violence and impunity, which indeed constitute grave violations. However, Colombian trade unions themselves argue that the need for labor law reform and for genuine enforcement represent at least as great a threat as violence and impunity to the ability of workers to exercise core worker rights like freedom of association and the right to collective bargaining. We agree: if violence were to end tomorrow and all perpetrators of violence brought to justice, the deficiencies in Colombian labor law and its enforcement would continue to deny millions of Colombian workers their basic rights.

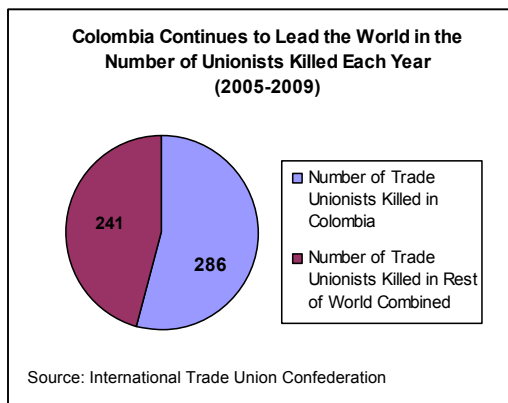
In addition, as we have previously testified, progress on worker rights is not a sufficient condition for moving forward an FTA with Colombia. The Colombian labor movement, and we, believe that the current FTA as negotiated is based on a deeply flawed model that fails to address concerns about the impact of FTAs on farmers, consumers, health care, the environment, investment rules, and Afro-Colombians.

In this submission, we highlight three labor issues: violence, impunity, and, as a prime example of non-violent worker rights violations, subcontracting. These are areas in which we have particular expertise.

I. Anti-Union Violence

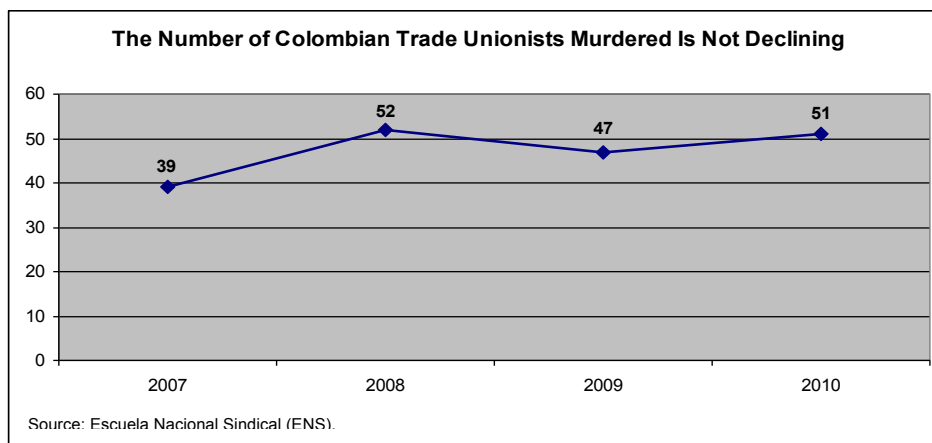
Summary: The steps the Colombian government has taken to decrease violence against trade unionists are hardly adequate, given the results. Colombia continues to be the most dangerous place in the world in which to be a trade unionist.

- Colombia leads the world in the number of unionists killed. In 2009, as with previous years, more unionists were killed in Colombia than the rest of the world combined.¹
- In 2010, the number of trade unionists murdered in Colombia, 51, actually increased over the previous year, 47, and is higher than in 2007, the first full year following the signing of the FTA.²



¹ International Trade Union Confederation (ITUC).

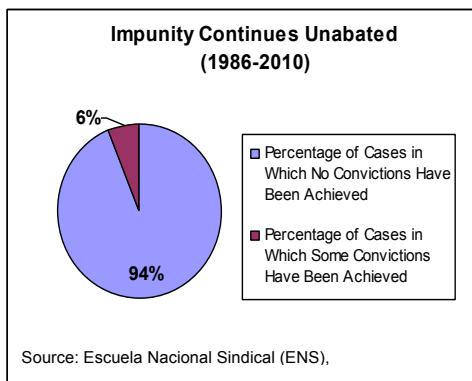
² Escuela Nacional Sindical (ENS). You can access the most recent report published by the ENS and the Colombian Commission of Jurists, entitled "Impunity and the Violation of the Human Rights of Trade Unionists in Colombia, 2009-2010 and 2002-2010," here: <http://www.usleap.org/files/ENS%20October%202010%20English.pdf>.



Murder is not the only form of violence against trade unionists in Colombia. Along with the more than 2,725 trade unionists that have been murdered from January 1, 1986 to August 22, 2009, in 2010 there were 21 attempted murders, 338 death threats, 35 forcible displacements, 7 disappearances, 5 kidnappings, and 16 cases of harassment against trade unionists documented by the Escuela Sindical Nacional (ENS), the leading Colombian human rights organization.

II. Impunity

Summary: In 2009, the government of Colombia made no progress on impunity. (Compilation, and therefore analysis, of 2010 convictions will not be available until spring 2011 at the earliest.) The backlog of unresolved cases of murdered trade unionists actually increased in 2009: of the 59 murdered trade unionist convictions achieved in 2009, 41 represented new convictions while 18 were for victims for whom some convictions had previously been achieved. Given that 47 trade unionists were murdered in 2009, the backlog of totally unresolved cases increased in 2009, continuing the 94% rate of impunity in cases of violence against trade unionists from 1986 to 2010.



The USLEAP analysis of sentences for convictions for murder in Colombia in 2009, published in December 2010 in the report “*Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence*,” also revealed the following:

- In 2009, the Colombian government achieved convictions in cases of 59 murdered trade unionists, with 77 individuals convicted for these murders, according to 71 rulings made from January 1, 2009 to December 31, 2009. This compares to 2008 figures of convictions in the cases of 49 murdered trade unionists, with 46 individuals convicted for these murders, and 2007 figures of convictions in the cases of 29 murdered trade unionists.
- Seventeen individuals were convicted in absentia in cases involving 14 victims. Seven of these cases were part of the 41 new convictions, leaving only 34 of the 59 cases of murdered trade unionists as achieving first time convictions and resulting in imprisonment.
- Of the 77 individuals convicted for murder in 2009, 69 were paramilitaries, 3 members of the armed forces, 3 from guerilla groups (1 from the FARC and 2 from the ELN), and 2 not affiliated with any armed group.
- An increasing percentage of convictions was derived from the Justice and Peace process. In 2009, the Justice and Peace process accounted directly or indirectly for 63 of the 77 individuals convicted for murder, with only 14 individuals convicted without contributions from the Justice and Peace process (down from the 22 convictions achieved by the specialized units in 2008).
- In only three of the 59 conviction cases of murdered trade unionists were convictions achieved for both the material and intellectual authors. Of the 77 individuals convicted, 32 were considered material authors and 45 intellectual authors.
- With the advent of the Justice and Peace process, there have been a growing number of convictions for intellectual authors. In 2009, 42 of the 45 intellectual authors convicted were due directly or indirectly to the Justice and Peace process. Outside of the Justice and Peace process, material authors continued to dominate, with 11 out of 14 convictions resulting in the prosecution of material authors.
- There have been few convictions for murders committed in recent years, possibly one of the factors undermining the deterrent value of recent progress against impunity. In 2009, only four convictions were achieved for the 236 murders committed during the previous four years, 2005-2008.
- A significant limitation is that the individuals convicted as the intellectual authors and therefore those ultimately responsible do not extend beyond the level of paramilitary commanders. The vast majority of convictions have not uncovered the real instigator of the crimes, particularly those who benefited from the murders in economic and

government sectors. Incomplete justice in each of these cases conceals the role of these acts of violence as part of an overall anti-union strategy, limiting progress.

III. The Colombian Labor Law Regime

Despite ratifying all principle United Nations covenants on human and worker rights under the International Labor Organization (ILO), Colombian labor law and enforcement mechanisms fail to effectively protect the rights of workers.

At the beginning of the 1990s, the Colombian government began to put into effect legislation promoting a form of “labor flexibility” that weakens labor law protections, deprives workers of their basic rights, and helps create an unstable and informal workforce deprived of basic rights and incapable of earning a living. The majority of minimum wage workers in Colombia are hired on a temporary contractual basis that undermine the fundamental rights of workers, failing to provide a living wage, healthcare, and pension while neglecting core worker rights, including the right to freedom of association and the right to collective bargaining. The casualization of work and shifting of permanent, stable work to temporary contract work is being achieved through the abuse of temporary contracts, pseudo-cooperatives, and temporary services agencies. Workers under temporary contracts do not receive health insurance, vacation, or social security, even if they have been employed by the same company for years.

Employers can also avoid providing employee benefits through the tactic of subcontracting, or hiring workers through Associated Labor Cooperatives (CTA). These workers are considered “associates” and not formal employees, and as such they are not legally entitled to the same rights under Colombian law. Many cooperatives are in fact managed by the employers and not the workers themselves, as should be the case. Reports indicate that many employers pressure their workers to join a cooperative or face dismissal.

Companies also use this mechanism as a means to violate workers’ right to freedom of association. Given that workers associated to cooperatives are treated as independent contractors in matters of wages and benefits, the government does not give them the autonomous right to form or join worker organizations. This is a direct violation of ILO Convention 87.

In 2010 the Colombian government passed Law 1429, the Formalization and Generation of Employment Law, which moves towards challenging involuntary cooperatives by increasing penalties for employers who hire workers to perform basic operations. However, the law does not ban cooperatives directly or prevent other forms of indirect employment that undermine access to fundamental labor rights. It is also not scheduled to begin implementation until July 2013, which delays an analysis of its effectiveness and potential benefits for cooperative workers

Case Study: Worker Rights Violations in the Flower Industry

U.S. consumers spend over \$18 billion annually on flowers, 60% of which are imported from Colombia. The Colombia flower industry is the recipient of U.S. trade benefits, and as such eighty-four percent of the flowers produced in Colombia are exported to the United States.

It has been extremely difficult for Colombian flower workers to exercise their basic rights. Until 2008 there were no independent unions with collective bargaining agreements in the flower sector. With the support of an international campaign, two contracts were signed in 2008 with Dole Fresh Flowers at the Splendor and Fragancia plantations. In early 2009, Dole sold its Colombian flower operations, the largest in the country, to the Nannetti group, which retitled the former Dole business as FlorAmerica in Colombia and as Sunburst Farms in the U.S. In the fall of 2010, workers reported that the company began withholding wages and fell behind on the legally-required payments for health insurance and social security, spawning a wave of strikes that the company has met with union-busting, violent intimidation, and fired workers. In spite of repeated calls to the Colombian government to intervene, the Ministry of Social Protection (MSP) has yet to effectively enforce the law with respect to this company. Two unionized plantations offer case studies.

Plantation Guacari: Workers went on strike from September 9-24, 2010 in protest of the company's failure to pay wages for one month and legally-required benefits for more than three months. The workers ended the strike when the company promised to provide at least some of what was owed. After the company reneged on its promises, on November 16 workers went back on strike.

On November 29, at a meeting with the MSP, the company demanded that the strike be lifted and agreed to provide back-pay; the union asked for a written agreement that would promise prompt payment of wages and would address the social security obligations. The company representatives reportedly walked out in anger.

The violent eviction took place the next day, on November 30. According to the union, "a group of scabs, spurred by a few supervisors and engineers in the service of the company... lashed out brutally against peaceful strikers [at Guacari] who were demanding payment of wages, paychecks and social security arrears.

"Union members, trying to avoid confrontation at all costs, ... were victims of insults and beatings with sticks and stones by strikebreakers, who apparently included common criminals recruited by the company, shouting that they wanted to work for free.

"From a distance, members of the Administration imparted instructions to continue the barbaric attack, which caused bruises to several people and wounded in the head union official Marina Rodriguez, who has hit with a wooden bench. After more than an hour of aggression, the employers broke down the gates, causing damage that they perversely tried to blame on the workers." On November 30, the company brought in thugs to beat workers, injuring several.

No one has yet been arrested for the beatings, while the company has filed criminal charges against the workers for disturbing operations. On December 1, approximately 100 Guacari workers resigned and the company brought in sub-contracted workers. The sub-contacted laborers later went on strike as a result of failure to receive wages.

Plantation Splendor: Splendor plantation workers went on strike on December 7 after the company shut down the plantation. Some resigned after signing an agreement with the company that guaranteed them a small amount of compensation in exchange for not demanding back-pay or benefits, money they have not yet received. On January 25, 76 workers were fired. The company has filed charges against the workers that went on strike. Negotiations were continuing underway as of mid-March 2011, without a resolution.

IV. Recommendations

USLEAP supports the March 2011 benchmarks proposed by Representatives Jim McGovern, George Miller (D-CA), Rosa DeLauro (D-CT), Mike Michaud (D-ME), Jan Schakowsky (D-IL) and Linda Sanchez (D-CA) as minimum steps the Colombian government should meet before Congress considers a vote on the Colombia FTA, as put forth in their memo to President Obama, “*Advancing Colombian Labor and Human Rights and Congressional Consideration*,” and submitted to the Ways and Means Committee.

With respect to the need to address impunity, USLEAP supports additional recommendations, as presented in the latest impunity report, “*Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence*.” These recommendations include:

- The Colombian government should establish a comprehensive investigative and legal policy that identifies anti-union violence as a specific type of violence and recognizes the impact of impunity on victims’ rights;
- To support this policy, the Colombian government should dedicate increased human resources with adequate political and financial support to investigate the enormous backlog of cases of murdered trade unionists;
- The Colombian government should publicly support and work with Colombian trade unions and human and labor rights organizations, especially those who have worked to end impunity in cases of violence against unionists;
- The Colombian government should guarantee the safety of the family members and trade unions of the murdered trade unionists, as well as the witnesses in these cases;
- The Prosecutor’s Office should investigate all cases of anti-union violence, but focus efforts by grouping cases by region, industry and union affiliation;
- The Prosecutor’s Office’s investigations should incorporate a socio-political analysis of the regional context, including its history of violence, the presence and operation of all armed groups, and the current social, economic and political situation. It should also include a

david pegg

Comment [1]: Recommendation added as per CUT

david pegg

Comment [2]: Recommendation suggested by the CUT

union-specific analysis that documents other crimes against members of the same union, prior crimes against the victim, the work of the union, and the victim's role in his or her union;

- The Prosecutor's Office should carry out a full analysis of the motives that does not overly depend on the perpetrator's version of the truth but rather is based on a socio-political analysis and the victim's union background, the activities he or she carried out, and those who may have had an economic or political interest in the crime being committed;
- The Prosecutor's Office should prosecute all responsible parties, especially those with economic or political interest in the crime and those who would have benefited from them.
- The Prosecutor's Office should carry out a thorough investigation of the facts, not only with respect to the crime of murder, but also the commission of other violent crimes, including forced disappearance, torture, and sexual violence;
- In these cases, the presiding judges should use their powers to urge the defendants entering into plea bargain agreements to reveal the full extent of their knowledge of the crimes before receiving reduced prison sentences or other legal benefits;
- These judges should convict the perpetrators of these murders for aggravated homicide, as opposed to homicide of a protected person, as a means to recognize the generalized and systematic nature of the crimes committed;
- The Prosecutor General's Office should create and implement effective coordination mechanisms between the Justice and Peace subunit and the specialized subunit on violence against trade unionists;
- Colombian prosecutors and investigators as well as the victims and their legal representatives from Colombian human rights organizations should be guaranteed full access to paramilitaries held in U.S. prisons; and
- The U.S. government should provide incentives for extradited commanders to fully reveal their human rights crimes and connections with the Colombian government and security force officials and ensure that their plea bargain agreements do not prevent further disclosures on these crimes.

Conclusion

Pro-FTA advocates maintain that the Colombian government has made significant progress in improving respect for worker rights over the past four years. As reflected in this submission, we take issue with that premise. Some steps have been taken, but not enough.

Approval of the FTA will remove the greatest incentive the government of Colombia has to take steps to improve labor conditions and decrease violence and impunity. To the degree that the Colombian government has taken any positive steps, it has done so solely because of the carrot of the pending FTA. It would be a grave mistake, with the potential for an upsurge of anti-union intimidation with violent consequences for trade unionists in Colombia, if the pending FTA were

Stephen Coats

Comment [3]: If they are responsible, should we not say "prosecute" rather than "identify?" This recommendation presumably is meant to go beyond the one before regarding doing the analysis.

David Fela

Comment [4]: Yes, "prosecute" is better

Stephen Coats

Comment [5]: Not sure I've got this point quite right.

David Fela

Comment [6]: Yes, you stated it better

passed before the government has demonstrated in practice a systemic commitment to ensure respect for worker rights, stop violence, and end impunity.

The experience of worker rights in Guatemala and the application of U.S. trade leverage is highly instructive. Guatemala and Colombia have historically been the two Latin American countries with the greatest level of violence against trade unionists, and there are significant parallels, and lessons.

USLEAP had extensive engagement with Generalized System of Preferences (GSP) worker rights petitions filed on behalf of Guatemalan trade unions from 1991 until 2006, when CAFTA replaced the GSP program. The worker rights conditions of the GSP program, and the threat of lost benefits, provided significant leverage to the U.S. government. Over the course of the GSP process (which included reviews, threats of review, and threats of suspension), the Guatemalan government set up new labor courts, passed labor law reforms, increased sanctions for violators, approved the first unions in the maquiladora sector, and broke through the previously-impenetrable wall of impunity. In 2003, negotiations over CAFTA led the Guatemalan government to pass the only contracts in the maquila sector, among other steps, thanks in part to the interest of former Ways and Means Chairman Sander Levin.

Violence also ebbed. In the two years before CAFTA was implemented, no Guatemalan trade unionists were reported murdered in a country long known as one of most repressive in the region. But since the implementation of CAFTA in June 2006, violence against trade unionists has surged. No trade unionists were murdered in Guatemala in 2006, the year of CAFTA's implementation. In 2009, there were 16, making Guatemala the second most dangerous country in Latin America to be a trade unionist.

While some argue that this violence against trade unionists in Guatemala is simply a reflection of a larger upsurge of violence, an analysis by an independent human rights group in Guatemala found that trade unionists have been disproportionately targeted. *"When looking at who has been assaulted during [January to June 2008], one can see that the attacks have been concentrated against union leaders. The concentration of attacks against trade unionists is unprecedented and should motivate an immediate reaction both condemnation and prevention."*³ The forces behind this upsurge of anti-union violence in Guatemala, much of it directed at trade unionists working directly or indirectly for major U.S. companies, are not unaware of the changes wrought by CAFTA's replacement of the GSP process. They know that under CAFTA, there are no sanctions of employers and that it has so far provided very limited trade leverage with respect to labor violations.

What will be the consequences in Colombia if the FTA is passed? Will the Colombian government "continue to move forward?" Or is it not much more likely that without the incentive of trying to persuade the U.S. government that it has made progress that any forward steps will cease? Our historical experience in Latin American countries with a reputation for violence against trade demonstrates that passage of the FTA would free anti-union forces to intensify anti-union behavior, including violence against trade unionists.

³ "Preliminary Report on the Situation Facing Human Rights Defenders, January-June, 2008." The Human Rights Defenders Protection Unit of Guatemala.

In sum:

The most important step the U.S. government can take to support progress on worker rights in Colombia, including progress against violence and impunity, is to not pass the pending FTA until there has been significant and systemic progress.